principal case, after overruling this decision, justify themselves on the ground that the basis of his decision was the proprietary right in the plaintiffs, and not that the privilege was destroyed; but saying, nevertheless that if the decision was based on the latter ground, it was wrong. The American cases touching on this point are decided on the basis of an attorney aiding a client in a fraud, and hence not privileged, although there are two decisions pointing in the opposite direction from the English case. In *Jeanes* v. *Fridenberg,* 3 PA. LAW JOURNAL, 199, the court holds that an attorney is not privileged from communicating facts concerning his client where the attorney himself is a party to the transaction he is called upon to disclose, and in *Matter of Robinson,* 140 N. Y. App. Div. 329, 336, the court in considering the question of an attorney's privilege, says, "When the corporation made him (the attorney) a director, and he accepted that office, such acceptance necessarily removed him from the relation of attorney or counsel to its officers so far as the corporate affairs were concerned." If the courts are called upon to order the production of an opinion written by "A" in his capacity as attorney to "A" in his capacity as executor, we would see a further application of this rather unique point. The question whether an attorney can be examined as a witness against his client in case of an attempt to perpetrate a fraud has been discussed in a great number of cases with varying results. *Matthews* v. *Hoagland,* 48 N. J. Eq. 455, 21 Atl. 1054; 66 Am. St. Rep. 237, note. In the *O'Rourke* case the Court points out the difficulty involved in the application of the rule that fraud will defeat the objection of privilege, for assuredly if merely crying fraud before a privileged communication lays it bare for inspection, the long standing rule of privilege as to communications between attorney and client has ceased to be of any practical benefit; while on the other hand, if the evidence by which fraud is to be proved cannot be obtained, the law has opened another avenue by which justice may be evaded. The court definitely settles that the mere allegation of fraud is insufficient, but that there must be something to give color to the charge, and that while every case must be decided upon its own merits, *Reg.* v. *Cox,* 14 Q. B. 153, 175, the plaintiff must show to the satisfaction of the court good grounds for saying that prima facie a state of things exists, which if not displaced at the trial will support a charge of fraud to rebut the presumption of privilege.

EVIDENCE—MOVING PICTURES—BEST EVIDENCE RULE.—In a woman's action under the Civil Rights Law for damages for exhibition without written consent of a motion picture of Caesarean operation, testimony of witnesses who had seen the picture as thrown on the screen in theaters, *held,* admissible to show it represented the plaintiff and could be identified as her picture. *Feeney* v. *Young* (1920), 181 N. Y. Sup. 481.

There is considerable room for doubt whether the film would constitute best evidence, were the best evidence rule applicable in this case; because the film was so small that it could not be made out, and also because the presentation upon the screen constituted the offense under the statute. The best evidence rule applies to written instruments. *Western Assur. Co.* v. *Polk,* 104 Fed. 649; *Orr* v. *Le Claire,* 55 Wis. 93. But where the writing is not in

issue, but merely collateral to it, the rule has no application, and parol evidence may be given, even though it covers the contents of the writing. *Coonrod* v. *Madden,* 126 Ind. 197; *Ledford* v. *Emerson,* 138 N. C. 502. It is generally held that except in cases of written instruments or records, although there may be more satisfactory means of knowledge, there is no higher grade of testimony as a means of communicating facts to a jury, than the statement of a witness who has himself had the best means of knowledge. *Clark* v. *Robinson,* 5 B. Monr. 55; *Commonwealth* v. *Morrill,* 99 Mass. 540; *Commonwealth* v. *Welch,* 142 Mass. 473. In *Lucas* v. *Williams,* [1892] 2 Q. B. 113, it was held in an action on the infringement of a copyright of a painting by publishing a photographic copy of it that proof of the photograph being a copy was allowable without requiring production of the painting. The cases above mentioned involve efforts to compel the production of a chattel and differ from those cases where a chattel is offered in evidence. The cases where there is an inscribed chattel, production of which is sought to be compelled, have given rise to a great mass of conflicting opinions which cannot be reconciled. See 2 WIGMORE, EV., § 1182.

FRAUDS, STATUTE OF—CABLE TRANSFER OF FOREIGN EXCHANGE WITHIN 17TH SECTION.—Plaintiff's oral agreement to deliver to defendant a cable transfer of exchange on London, England, for £20,000 sterling within four months at defendant's option to be paid for in dollars at the exercise of that option, thereby making available by cable to the buyer a credit of the amount specified at the point specified was *held,* either the sale of a "commodity" or a "chose in action" within the Statute of Frauds and unenforceable. *Equitable Trust Co. of N. Y.* v. *Keene,* (1920) 183 N. Y. Supp. 699.

The New York Statute of Frauds expressly includes choses in action. "A contract to sell or a sale of any goods or choses in action", PERSONAL PROPERTY LAW, SEC. 85, CH. 45, LAWS 1909, CONSOL LAW, c. 41. Section 156 of the PERSONAL PROPERTY LAW defines "goods" as including "all chattels personal other than things in action and money." So money is not considered as goods under the New York statute. In order then for the contract to sell 12,000 pounds to come within the statute it will have to appear that said pounds are not considered money. There is authority for this view. Foreign money when dealt in in this country is to be regarded as a commodity. *Reisfeld* v. *Jacobs,* 176 N. Y. Supp. 223. Even domestic money (gold) when the subject of a contract of sale, has been regarded not as money but as a commodity, and a contract for the sale thereof was held to be within the Statute of Frauds. *Peabody* v. *Speyers,* 56 N. Y. 230; *Fowler* v. *N. Y. Gold Exchange Bank,* 67 N. Y. 138; *Cooke* v. *Davis,* 53 N. Y. 318. In view of these authorities the court had ample reason for holding that the contract to transfer the title to 12,000 English pounds was within the statute. This was on the theory that the sale of a cable transfer of exchange was the sale of a commodity. But the court went still further and held that it might also be considered as the sale of a chose in action. The plaintiff's contention was that this was really a provision of credit and that credit meant "the capacity of being trusted." Plaintiff cited in support of this contention *Dry Dock Bank* v.